IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5759 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALA KESUBHA ANUPSING

Versus

MAMLATDAR

Appearance:

MR SUREN M SHAH for Petitioner

Ms.KATHA GAJJAR, A.G.P. for Respondents

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/11/2000

ORAL JUDGEMENT

1. The prayer of the petitioner is for setting aside the Notice (Annexure : D) issued on 16.8.1991 u/s. 61 of the Bombay Land Revenue Code asking the petitioner to vacate the encroachment over the Government land within seven days. The second prayer is for direction to the

respondents not to dispossess the petitioner from the land in question during pendency of application (Annexure : B) made by the petitioner for regularisation of his possession and the third prayer is for a writ of mandamus directing the respondent No.1 to decide the application of the petitioner for regularisation made by him vide Annexure : B.

2. According to the petitioner he is running tea stall over a portion of Survey No.246 which is Government waste land situated within the limits of Vodising Gram Panchayat. The petitioner invested about Rs. 18,000/for erecting boundry wall and roof for running the tea stall. The aforesaid gram panchayat never raised any objection to the petitioner's occupation over the disputed land. Still the respondent No.1 initiated proceeding u/s. 61 of the Bombay Land Revenue Code. The petitioner was directed to remove encroachment and fine was ordered to be paid. The fine was paid by the petitioner. The petitioner moved an application to the respondent No.1 on 11.10.1990 for regularising the occupation of the said land by the petitioner vide Annexure : B. The Gram Panchayat, Vodising, through its Resolution dated 10.8.1989, resolved that there is no objection if the land is occupied by the petitioner and is regularised and opined that the land may be granted to the petitioner on permanent basis by taking occupancy price. The copy of Resolution is Annexure : C. Despite this resolution and despite pendency of petitioner's application for regularisation of possession vide Annexure : B, notice u/s. 202 of the Bombay Land Revenue Code was issued on 16.8.1991 calling upon the petitioner to hand over possession of the aforesaid land within seven days of receipt of said notice vide Annexure : B. It is this notice which is under challenge in this petition.

3. The counter Affidavit has been filed by the respondent No.1 in which it is stated that the encroachment is over survey No.206 and not over the Survey No. 246 as alleged by the petitioner. It is further stated in the counter Affidavit that the encroached land measures about 83 sq.mtrs. According to the counter Affidavit Survey no.206 is Government traversed land which is not vested in the panchayat and the Panchayat has no authority or right to grant the said land to the petitioner hence Resolution of the Panchayat is of no consequence. It is also stated that the petitioner has not stated correct facts in the petition. The averment of the petitioner that he was granted land by the Panchayat is incorrect. He was never granted any land by the Gram Panchayat nor the Gram Panchayat has any

jurisdiction to grant Government land which had not vested in it. Lastly it is stated that since it is a case of encroachment exceeding 12 years notice was rightly issued u/s. 202 and there is no merit in the petition.

4. Having considered the averments made in the petition and the Counter Affidavit it is clear that it is a case of encroachment made by the petitioner over the Government waste land of Survey No.206. It is further clear from the counter Affidavit that this land has not vested in the Gram Panchayat. Consequently grant or recommendation of the Panchayat to grant the land to the petitioner on permanent basis has no effect. So far as pendency of application of the petitioner is concerned it is stated in the affidavit that no application for regularisation is pending before any Authority. As such no direction can be given to the respondent No.1 for regularisation of the petitioner's possession. The petitioner has no vested or legal right to claim regularisation of possession of encroachment made by him over the Government land. Consequently the notice was rightly issued asking the petitioner to vacate encroachment.

5. There is no merit in this petition which is hereby dismissed with no order as to costs.

sd/-

Date : November 09, 2000 (D. C. Srivastava, J.)

sas